

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-500-C - ORDER NO. 91-1076 ✓
DECEMBER 2, 1991

IN RE: Application of Excel Telecommunications,) ORDER
Inc. for a Certificate of Public) GRANTING
Convenience and Necessity.) CERTIFICATE

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Excel Telecommunications, Inc. (Excel) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. Excel's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1990) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Excel to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of Excel's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Excel complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone and Telegraph

Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on Wednesday, November 13, 1991, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Marjorie Amos-Frazier presided. Frank R. Ellerbe, III, Esquire, represented Excel. Carl F. McIntosh, Esquire, represented the Consumer Advocate; Caroline N. Watson, Esquire, represented Southern Bell; and F. David Butler, Staff Counsel, represented the Commission Staff.

Excel presented the testimony of Stephen R. Smith in support of its application. Mr. Smith explained Excel's request for certification to operate as a reseller of interexchange telecommunications services in South Carolina. Smith explained that the Company wished to resell the toll services of U.S. Sprint, and other interexchange carriers legally certificated in South Carolina. Excel does not propose to provide intraLATA service, nor Alternate Operator Services (AOS). Excel proposes to provide MTS services, and calling card services. Business and residential services are target markets. Excel will be responsible for billing, trouble reporting, and customer services. Excel directly bills its business customers. Residential customers are billed through the Local Exchange Carriers (LEC's) with which Excel has contractual arrangements. Smith outlined Excel's financial qualifications, background, and technical capabilities.

Excel and Southern Bell entered into a Stipulation agreement, whereby the parties agreed that any grant of authority should clearly be for interLATA services only. Further, if any intraLATA calls are inadvertently completed by the carrier, the carrier should reimburse the LEC pursuant to the Commission's Order in PSC Docket No. 86-187-C. Also, Excel and Southern Bell agreed that Excel has no current or future plans to resell such services described as "a virtual private network offering which utilizes the capacity and software technology of a switched network to enable customers to secure what are essentially private network services." This service is offered by U.S. Sprint as "Virtual Private Network." Further, the parties agreed that all operator services should be only for interLATA calls and any "0+" or "0-" intraLATA calls should be handed off to the LEC.

After full consideration of the applicable law and the evidence presented by Excel, the Stipulation between Excel and Southern Bell, and the record as a whole, the Commission hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Excel is incorporated under the laws of the State of Texas, but is either licensed to do business as a foreign corporation in South Carolina by the Secretary of State, or has its Application for said license pending.

2. Excel operates as a non-facilities based reseller of interexchange services, and wishes to do so on an interLATA basis in South Carolina.

3. Excel has the experience, capability, and financial resources to provide the services as described in its application.

4. Southern Bell and other local exchange carriers (LEC's) should be compensated for any unauthorized intraLATA calls completed through Excel's service arrangements.

5. The Commission finds the Stipulation between Excel and Southern Bell to be fair and reasonable, and adopts said Stipulation.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determined that a certificate of public convenience and necessity should be granted to Excel to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility-based carriers approved by the Commission.

2. That all intrastate intraLATA calls must be completed over intraLATA WATS, MTS, private and foreign exchange lines or any other service of facility based carriers approved for resale on an intraLATA basis. Any intraLATA calls not completed in this manner would be considered unauthorized traffic and the Company will be required to compensate LEC's for any unauthorized intraLATA calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

3. The Commission adopts a rate design for Excel for its

resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts Excel's proposed maximum rate tariffs.

4. Excel shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Excel shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of Excel's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1990).

5. Excel shall file its tariff and an accompanying price list to reflect the Commission's findings within thirty (30) days of the date of this Order.

6. Excel is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Excel's resale of services, an end user should be able to access another interexchange carrier or operator

service provider if they so desire.

8. Excel shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If Excel changes underlying carriers, it shall notify the Commission in writing.

9. Excel shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. Excel shall not operate as a reseller of long distance services in South Carolina until its application for a license to do business as a foreign corporation in South Carolina is approved by the Secretary of State.

11. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT
PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT
AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR
ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE
INVESTMENT (SEE 13 ABOVE).